



STATE OF WASHINGTON
PUGET SOUND ACTION TEAM
OFFICE OF THE GOVERNOR

P.O. Box 40900 • Olympia, Washington 98504-0900
(360) 725-5444 • (360) 725-5456

July 22, 2005

Mike Gallagher, PBT Coordinator
Department of Ecology
PO Box 47600
Olympia, WA 98504

Dear Mr. Gallagher:

Thank you for the opportunity to comment on the proposed rule, Chapter 173-333 WAC Persistent Bioaccumulative Toxins. The Action Team commends the Department of Ecology's efforts to phase out these harmful toxins.

The Puget Sound Action Team has responsibility for defining, coordinating and helping to implement Washington's environmental agenda for Puget Sound. The Action Team works through a partnership structure, including a chair appointed by the governor, directors from 10 state agencies and representatives from tribal, federal and local governments with direct responsibilities and authorities for conservation and restoration of the Puget Sound.

The following comments and suggestions are provided on behalf of the Puget Sound Action Team staff.

We support WAC 173-333-140 (1) *Scientific information*. We believe that lack of full scientific consensus should not be used as a justification for delaying reasonable measures to prevent harm to human health or the environment. Further, we believe that whenever possible the precautionary principle should be invoked to protect Puget Sound's marine resources. Specifically, we ask you to consider incorporating the precautionary principle approach into WAC 173-333-420 (1)(f).

Consistent with the precautionary approach, we recommend including at least two phthalate compounds, which we believe meet the selection criteria, into the PBT list (WAC 173-333-310 (2)): di(2-ethylhexyl) phthalate (DEHP) (CAS no. 117-81-7) and di-isodecyl phthalate (DIDP) (CAS no. 26761-40-0). Other phthalate compounds should be considered for inclusion in the PBT list as appropriate.

WAC 173-333-310 (4): We recommend that section 173-333-310 include a specific expectation for how often the PBT list will be reviewed. On average, over 700 new chemicals are introduced into commerce each year and subsequently into the environment. In addition, our scientific understanding of how certain chemicals interact with the marine environment is changing at a rapid pace. Due to these rapidly changing variables, we suggest adopting an annual review of the PBT list. We suggest modeling this review approach after the Sediment Management Annual Review Meeting (SMARM) used by the Dredged Material Management Program.

We recommend omitting WAC 173-333-410 (2) (a), (b), and (c). We believe a chemical action plan should eventually be developed for *all* category 1 chemicals on the PBT list, as identified under WAC 173-333-310 (2). We recommend using the decision-making process in WAC 173-333-410 (3) to rank order the chemical action plans that will be developed for each chemical.

We see the public notice and comment section outlined in WAC 173-333-410 (3)(c) as an excellent opportunity to collect information from the public to help develop a Chemical Action Plan. Specifically, we recommend directing the public to comment on the rank order of the chemical under review for the chemical action plan, the PBT's presence in the environment, and suggestions for corrective actions to include in the chemical action plan.

If the recommendations outlined in WAC 173-333-420 (1)(f)(i) (A-D) are in a rank order, we recommend that (B) *Environmental and human health benefits associated with implementing the action* is considered first. If they are not listed in rank order, include language that makes it clear that each of the criteria will be considered equally. As noted above, we ask you to consider incorporating the precautionary approach into the development of chemical action plan recommendations.

Since the purpose of the PBT rule is to address shortcomings in existing federal and state regulations dealing with these chemicals, limiting the plan to existing regulations would be counter to its purpose. We do, however, support the need for the chemical action plan to consist of recommendations that do not *violate* existing federal or state laws or regulations. We suggest omitting WAC 173-333-420 (2)(c). We do not believe an explanation is needed to elaborate on why the recommendations differ from existing regulations since a chemical action plan would only be developed if the chemical under consideration was not adequately addressed under existing regulations.

Thank you again for your efforts to protect the environment.

If you have any questions about our comments, please to contact Anne Criss (360-725-5439, acriss@psat.wa.gov).

Sincerely,

John Dohrmann
Director of Government Affairs